

IN THE WATER COURT OF THE STATE OF MONTANA  
UPPER MISSOURI DIVISION  
WILLOW CREEK BASIN (41N)  
PRELIMINARY DECREE

\*\*\*\*\*

CLAIMANT: Haniel Inc.

**CASE: 41N-0226-R-2022**  
41N-111053-00

NOTICE OF INTENT TO APPEAR: Charlotte L. Marshall

**NOTICE OF FILING OF MASTER'S REPORT**

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusions of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

**MASTER'S REPORT**

All water right claims that appeared in the Preliminary Decree for Willow Creek (Basin 41N) were subject to "issue remarks" resulting from pre-decree examination by the DNRC, objections, and counterobjections.

Claim 41N 111053-00 was consolidated into Case 41N-0226-R-2022 to resolve the issue remarks.

### FINDINGS OF FACT

1. Claim 41N 111053-00 received the following substantive issue remark:  
THE CLAIMED FLOW RATE OF 10.00 CFS APPEARS TO BE EXCESSIVE FOR  
THE CLAIMED MEANS OF DIVERSION.
2. On July 7, 2022, the Court consolidated the claim ordered the Claimant to work with the DNRC to resolve the issue remark.
3. On October 3, 2022, DNRC Water Resources Specialist Dixie Brough filed a *Memorandum* in this matter. The *Memo* states that the DNRC was not contacted by the Claimant. However, Ms. Brough's *Memo* states that because the claimed volume of the on-stream reservoir is less than 15.00 acre-feet, the volume should be left as claimed per Supreme Court Examination Rule 29(c)(1)(ii)(A). Further, although a volume of 1.50 acre-feet was claimed on the Statement of Claim, it does not appear on the abstract. Ms. Brough's *Memo* notes that the volume should be added to the abstract. If the volume as claimed is added to the abstract, according to Ms. Brough, the DNRC recommends the removal of the above-listed issue remark
4. Claim 41N 111053-00 also received a notice-type issue remark from the DNRC during its claims reexamination. No Objections were filed.
5. Claim 41N 111053-00 also received a Notice of Intent to Appear from Charlotte L. Marshall.

### PRINCIPLES OF LAW

1. A properly filed Statement of Claim for an existing water right is prima facie proof of its content. Section 85-2-227, MCA; Rule 10, W.R.Adj.R.
2. Prima facie proof may be contradicted and overcome by a preponderance of the evidence. Rule 19, W.R.Adj.R.

3. A preponderance of the evidence is evidence that shows a fact is “more probable than not.” *Hohenlohe v. State*, 2010 MT 203, ¶ 33, 357 Mont. 438, 240 P.3d 628.

4. If prima facie status is overcome, the burden shifts back to the claimant to demonstrate historical use. *79 Ranch v. Pitsch*, 204 Mont. 426, 432-33, 666 P.2d 215, 218 (1983).

5. Section 85-2-248(2), MCA, requires that the Water Court resolve all issue remarks that are not resolved through the objection process. *See also* Rule 7, W.R.Adj.R.

6. The Water Court may use information submitted by the DNRC, the Statement of Claim, and any other data obtained by the Court to evaluate a water right. Sections 85-2-227, -231(2), MCA.

7. When resolving issue remarks, the Water Court must weigh the information resulting in the issue remark and the issue remark against the claimed water right. Section 85-2-247(2), MCA. The factual evidence on which an issue remark is based must meet the preponderance of evidence standard before the prima facie status of a claim is overcome. 43Q 200996-00 et al., Order Establishing Volume and Order Closing Case, at 18, June 8, 2015.

8. If a claimant fails to comply with an order issued by the Water Court, the Court may issue orders of sanction that are just. Rule 22, W.R.Adj.R.

### CONCLUSIONS OF LAW

1. The information in the record is sufficient to resolve the above-listed issue remarks appearing on the claim. Based on the information contained Ms. Brough’s *Memo*, the elements should remain as they appear on the abstract, the claimed volume of 1.50 acre-feet should be added to the abstract, and the issue remark should be removed from the claim. The removal of the issue remark, without modification to the elements of the claim, resolves the Notice of Intent to Appear filed by Charlotte L. Marshall.

2. The notice-type issue remark appearing on claim 41N 111053-00 served its notice purpose and should be removed from the claim.

### RECOMMENDATIONS

Based on the foregoing Findings of Fact and Conclusions of Law, this Master recommends that the Court adopt the changes as outlined above.

A post decree abstract of the water right claim reflecting the recommended changes is attached to this Report.

### **ELECTRONICALLY SIGNED AND DATED BELOW.**

#### **Service via USPS Mail:**

Haniel Inc.  
32086 Lolo Point Lane  
Bigfork, MT 59911-8277

Charlotte L. Marshall  
858 Gus Blaze Rd.  
Shelby, MT 59474

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**POST DECREE  
ABSTRACT OF WATER RIGHT CLAIM  
WILLOW CREEK  
BASIN 41N**

**Water Right Number:** 41N 111053-00 STATEMENT OF CLAIM

**Version:** 4 -- POST DECREE

**Status:** ACTIVE

**Owners:** HANIEL INC.  
32086 LOLO POINT LN  
BIGFORK, MT 59911 8277

**Priority Date:** JULY 20, 1905

**Type of Historical Right:** FILED

**Purpose (use):** FISH AND WILDLIFE

**\*Flow Rate:** NO FLOW RATE HAS BEEN DECREED FOR THIS USE FROM THIS ONSTREAM RESERVOIR.

**\*Volume:** 1.50 AC-FT  
THE USE OF THIS WATER APPEARS TO BE LARGELY NONCONSUMPTIVE.

**Source Name:** CROOKED COULEE

**Source Type:** SURFACE WATER

**Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SWSENE	6	33N	1E	TOOLE

**\*Period of Diversion:** JANUARY 1 TO DECEMBER 31

**Diversion Means:** PIT

**\*Reservoir:** ONSTREAM

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	SWSENE	6	33N	1E	TOOLE

**Diversion to Reservoir:** DIVERSION # 1

**\*Period of Use:** JANUARY 1 TO DECEMBER 31

**Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			W2SENE	6	33N	1E	TOOLE